Supreme Court, U. S.
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No. 79-496

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

TED R. MOORE,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

Parker v. *Randolph*, ____ U.S. ____, 99 S. Ct. 2132, 60 L. Ed. 2d 713 (1979)

Bruton v. *United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968)

Harrington v. *California*, 395 U.S. 250, 89 S. Ct. 1726, 23 L. Ed. 2d 284 (1969)

Schneble v. *Florida*, 405 U.S. 427, 92 S. Ct. 1056, 31 L. Ed. 2d 340 (1972)

Brown v. *United States*, 411 U.S. 223, 93 S. Ct. 1565, 36 L. Ed. 2d 208 (1973)

People v. *Moore*, 65 Ill. App. 3d 712, 382 N.E. 2d 810 (1979)

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REASONS FOR DENYING THE WRIT

I.

THIS CASE PRESENTS NO ISSUE OF UNUSUAL IMPORTANCE OR INTEREST.

The Petitioner claims that this case presents an issue identical to that considered by this Court in *Parker* v. *Randolph* ___ U.S. ___, 99 S.Ct. 2132, 60 L.Ed.2d 713 (1979).

In *Parker*, this Court considered the issue of whether *Bruton* v. *United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), which reversed the conviction of a

defendant who had been implicated in the crime by his codefendant's extrajudicial confession, similarly requires reversal where the defendant himself has also confessed and his confession "interlocks" with and supports the codefendant's confession. The Court held that it does not.

In the present case, however, no confession was introduced. The "statements" to which the petitioner refers are primarily those made by both defendants in furtherance of the conspiracy for which they were charged, and one remark by the codefendant to a state investigator. Clearly, there is no basis for applying the holding or the logic of either *Bruton* or *Parker* to these facts. Thus, this is not an appropriate case to clarify, as petitioner requests, any of the issues in either of those decisions, including the relationship of *Bruton* issues to the right to confrontation.

II.

THE APPELLATE COURT PROPERLY ANALYZED THE POSSIBLE IMPLICATIONS OF *BRUTON* IN THIS CASE.

This Court, of course, has not dictated a *per se* rule requiring reversal in every case in which a nominal *Bruton* violation has occurred. In fact, it has rejected that contention and recognized that in some cases the evidence of the defendant's guilt is so overwhelming that the error of admitting the codefendant's confession is harmless beyond a reasonable doubt. *See*, for example, *Harrington* v. *California*, 395 U.S. 250, 89 S.Ct. 1726, 23 L.Ed.2d 284 (1969); *Schneble* v. *Florida*, 405 U.S. 427, 92 S.Ct. 1056, 31 L.Ed.2d 340 (1972); and *Brown* v. *United States*, 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973).

The Appellate Court in the instant case reviewed the totality of the evidence and determined that the properly admitted evidence at trial, wholly apart from any extrajudicial utterances attributed to the codefendant, conclusively established "that the defendant's acts and intent throughout were to deceive members of the public into investing in a distributorship business which was largely a sham." *People of the State of Illinois* v. *Ted Moore*, 65 Ill. App. 3d 712, 382 N.E.2d 810 at 814 (1979).

In reaching this conclusion, the Appellate Court considered the trial testimony of numerous witnesses who detailed the defendant's involvement in the scheme, including falsely representing himself as a vice president of the company, and providing the prospective investors with a telephone reference in the name of a Michael Stevens, purportedly a prosperous distributor, which in fact was the defendant's own telephone number.

Thus, the Appellate Court examined the evidence in light of the defendant's allegation of a *Bruton* violation, and properly determined that:

> . . . even if we should find that it was error for the trial court to admit these statements of the co-defendant, the error was harmless beyond a reasonable doubt in light of the overwhelming nature of the evidence against the defendant by which the jury could easily find the defendant guilty without undue reference to the co-defendant's statements, especially where, as here, the trial court instructed the jury to limit the admission of these statements to the co-defendant.

People v. *Moore*, 65 Ill. App. 3d 712, 382 N.E.2d 810 at 815 (1979).

In view of this aspect of the instant case, it is apparent that even if petitioner's contentions regarding the relationship of *Bruton* and *Parker* to this case were taken, *arguendo*, to be meritorious, it would not alter the ultimate disposition in this case.

CONCLUSION

For the foregoing reasons, the respondent respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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